

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TERESA R. DOERR,

Plaintiff,

v.

ORDER

Civil File No. 13-3108 (MJD/LIB)

TODD G. HOFFMAN,
LEE R. KELLY, WRIGHT COUNTY,
and JOHN DOE 1 – JOHN DOE 10,

Defendants.

Joseph A. Gangi, William S. Partridge and Daniel J. Bellig, Farrish Johnson Law Office, Chtd., Counsel for Plaintiff.

Jamie L. Jonassen and Joseph E. Flynn, Jardine, Logan & O'Brien, PLLP, Counsel for Defendants.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Leo I. Brisbois, dated September 15, 2014. [Docket No. 26]

Pursuant to statute, the Court has conducted a de novo review of the findings and recommendations to which an objection was made. 28 U.S.C. §

636(b)(1); D.Minn. LR 72.2(b). Based upon that review, the Court **adopts** the Report and Recommendation of United States Magistrate Judge Brisbois dated September 15, 2014, subject to the exceptions, below.

The Court declines to adopt Magistrate Judge Brisbois' analysis of Plaintiff's Minnesota Government Data Practices Act ("MGDPA") claim, section II.D.2, paragraph four. (R&R at 17.) The MGDPA, codified in relevant part at Minnesota Statutes § 13.05 (2013), prohibits unlawful "collect[ion], stor[age], use[] or disseminat[ion]" of private or confidential data. Although unlawful dissemination may serve as a basis for liability under the MGDPA, a plain reading of the statute counsels that an allegation of unlawful "use" of private data may also suffice to claim a violation of the Act.

The Court also declines to adopt the Magistrate Judge's reasoning with respect to determining a "responsible authority" for Minnesota Driver and Vehicle Services ("DVS") records, section II.D.2, paragraphs one and two. (R&R at 16.) Under the MGDPA, civil actions for damages may be brought against a responsible authority or government entity. Minn. Stat. § 13.08 (2013). Where a plaintiff alleges that a county failed to establish appropriate safeguards to prevent misuse of DVS records, liability falls on the individual designated by the

county's governing body to oversee the collection, use, and dissemination of the DVS data. Minn. Stat. § 13.02, subd. 16(b). Where, as here, no individual has been designated by the county, the responsible authority is the county coordinator or administrator. Minn. Stat. § 13.02, subd. 16(b)(1). Thus, Doerr properly asserted her MGDPA complaint against Kelly in his official capacity as Wright County Coordinator. See Weitgenant v. Patten, Civil No. 14-255, 2014 WL 5489383, at *6 n.9 (D. Minn. Oct. 30, 2014).

Having established that Kelly is the authority responsible for the DVS records at issue, the Court must assess whether Doerr has stated an actionable claim against him under the MGDPA. Doerr alleges that Kelly failed to establish appropriate security safeguards, procedures, and other measures to prevent misuse of DVS motor vehicle records, in violation of the MGDPA. Minn. Stat. § 13.05, subd. 5. Aside from that sole conclusory allegation, however, Doerr asserts no facts to support a claim against Kelly under the MGDPA. Therefore, the Court finds that dismissal of Doerr's MGDPA claim against Kelly is warranted.

Because the Court dismisses Doerr's claim against Kelly in his official capacity, the Court also dismisses Doerr's MGDPA claim against Wright County.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

HEREBY ORDERED:

That Defendants' Motion to Dismiss [Docket No. 13] is **GRANTED** in part and **DENIED** in part, as follows:

1. Doerr's Count 1, Violation of the DPPA, is **DISMISSED with prejudice**, except for Doerr's DPPA claim stemming from the alleged May 10, 2012 DVS access as asserted against Hoffman and John Doe Defendants 1-10.
2. Doerr's Count 2, Common Law Invasion of Privacy, is **DISMISSED, with prejudice**.
3. Doerr's Count 3, Violation of the MGDPA, is **DISMISSED, with prejudice**.

Dated: March 16, 2015

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court